

AMENDED IN SENATE SEPTEMBER 6, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1383**

---

**Introduced by Committee on Labor and Employment  
(Roger Hernández (Chair), Alejo, Chau, and Holden)**

March 4, 2013

---

~~An act to amend Section 1205 of the Labor Code, relating to employment. An act to amend Sections 25199.3 and 25200 of, and to add Sections 25107, 25122.10, 25178.2, 25186.4, and 25199.3.1 to, the Health and Safety Code, and to amend Section 21151.1 of the Public Resources Code, relating to hazardous waste.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1383, as amended, Committee on Labor and Employment. ~~Employment regulations: local enforcement. Hazardous waste: permitting.~~

(1) Existing law requires the Department of Toxic Substances Control to post certain information regarding the status of the hazardous waste facilities program on or before January 1 of each odd-numbered year on its Internet Web site.

This bill would define the term “significant noncomplier” and would require the department to develop and maintain a searchable database that contains certain information regarding hazardous waste facilities permits, including information regarding significant noncompliers, for certain hazardous waste facilities.

(2) Existing law requires the department to issue a hazardous waste facilities permit to a facility that, in the judgment of the department, meets specified requirements. The permit is required to be issued for a fixed term and existing law specifies a procedure for the continuation

of that term. Existing law also authorizes the department to issue specified permits and grants of authorization to hazardous waste facilities managing specified types of hazardous waste, including standardized permits for hazardous waste facilities that are not subject to the federal Resource Conservation and Recovery Act of 1976 (RCRA). The department is required to issue a written report regarding the issuance of a hazardous waste facilities permit regarding the violations of specified laws or regulations by the applicant.

This bill would prohibit the department from issuing, renewing, or modifying a hazardous waste facilities permit for a hazardous waste facility, as defined, if the applicant, project proponent, or any of its affiliated entities is a significant noncomplier, unless the department makes a specified finding.

(3) Existing law establishes procedures for a land use decision by a local agency concerning a hazardous waste facility project, as defined, including the requirements imposed by the Permit Streamlining Act. An applicant for a hazardous waste facility project is authorized to submit applications for land use decisions and for one or more permits, including a hazardous waste facilities permit, simultaneously. A state agency is prohibited from refusing to issue a permit for a hazardous waste facility on the grounds that the applicant has not been granted a local land use permit.

This bill would require an applicant for a hazardous waste facilities permit for a hazardous waste facility project or for the modification of a hazardous waste facilities permit for a material expansion of a hazardous waste facility to file the application for a hazardous waste facilities permit with the department concurrently with the applications for any land use decisions that a local agency may require for the hazardous waste facility. The bill would require the department to serve as the lead agency for the issuance of the hazardous waste facilities permit pursuant to the California Environmental Quality Act and would require any other state agency that is required to issue a permit and any other local agency that is required to issue a land use decision to serve as a responsible agency. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

The bill would require the department to take specified actions with regard to holding hearings, providing notice, and making certain environmental documents and other materials related to a hazardous waste facilities permit publicly available on its Internet Web site.

*The bill would require the department to prepare and certify an environmental impact report and a health risk assessment for the permit in a specified manner and to either reject the application for the hazardous waste facilities permit or issue a draft hazardous waste facilities permit. The bill would prohibit the department from issuing a final hazardous waste facilities permit until all the local land use decisions for the hazardous waste facility have been issued.*

*(4) The California Environmental Quality Act requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. Existing law requires the preparation of an EIR, or the modification, addendum, or supplement of an existing environmental impact report, for the initial issuance of a hazardous waste facilities permit to an offsite large treatment facility or for the initial issuance of a hazardous waste facilities permit to a land disposal facility.*

*This bill would instead require the preparation of an EIR or the modification, addendum, or supplement of an existing EIR for the issuance of a hazardous waste facilities permit, including the initial issuance of a permit to a land disposal facility, or the issuance of a standardized hazardous waste facility permit or the modification of a permit for a facility undergoing a material expansion, as defined.*

*(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Under existing law, the fundamental authority to regulate wages, hours, and working conditions lies within the police power of both the state and local jurisdictions. Existing law provides that such state laws regulating these matters do not restrict the exercise of local police powers in a more stringent manner.~~

~~This bill would state that nothing in the Labor Code prohibits local enforcement of employment regulations in a manner more stringent than enforcement by the state.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 25107 is added to the Health and Safety*  
2     *Code, to read:*

3     25107. *The Legislature finds and declares all of the following:*

4     (a) *Hazardous waste facilities provide a valuable and necessary*  
5     *service in California, and the regulation of hazardous waste*  
6     *facilities allows these facilities to provide this valuable and*  
7     *necessary service while also ensuring protection of the environment*  
8     *and general welfare.*

9     (b) *Central to the regulation of hazardous waste facilities is*  
10    *ensuring that the environmental impacts of those facilities are*  
11    *adequately considered during the permitting process, and the*  
12    *standardization within the department of this environmental review*  
13    *is desirable.*

14    (c) *Also central to the regulation of hazardous waste facilities*  
15    *is ensuring that entities that operate these facilities comply with*  
16    *applicable laws and regulations, and that entities that frequently*  
17    *fail to comply with applicable laws and regulations are not given*  
18    *new or renewed hazardous waste facilities permits.*

19    SEC. 2. *Section 25122.10 is added to the Health and Safety*  
20    *Code, to read:*

21    25122.10. (a) *“Significant noncomplier” means a facility, an*  
22    *owner, or an operator that is required pursuant to the federal act*  
23    *to obtain a hazardous waste facilities permit, in accordance with*  
24    *Section 25200, and for which the department finds either of the*  
25    *following conditions:*

26    (1) *The facility is owned or is operated by a person that, together*  
27    *with its affiliates and predecessors, or the owner or operator is a*  
28    *person that, has had three separate Class I violations, that have*  
29    *been formally noticed, and have not been rescinded or classified*  
30    *by the department as a violation other than a Class I violation, in*  
31    *the previous 10-year period.*

32    (2) *The facility, owner, or operator chronically and without*  
33    *reasonable basis, deviates from the terms of a permit, order,*  
34    *settlement document, or decree issued pursuant to this chapter by*  
35    *failing to perform work as required by the terms of the permit,*  
36    *order, settlement document, or decree so that the deviation or*  
37    *failure may be considered willful recalcitrance.*

1     (b) For purposes of determining whether a facility, an owner,  
2     or an operator is a significant noncomplier, the department shall  
3     not include a violation or other noncompliance that occurred  
4     before the date of acquisition of all, or a portion of, the facility,  
5     through a bona fide, arms-length transaction, as defined by the  
6     department pursuant to regulation.

7     SEC. 3. Section 25178.2 is added to the Health and Safety  
8     Code, to read:

9     25178.2. (a) For purposes of this section “hazardous waste  
10    facilities permit” means a permit issued pursuant to Section 25200  
11    for a facility that is required to obtain a hazardous waste facility  
12    permit pursuant to the federal act.

13    (b) The department shall develop and maintain a searchable  
14    database that contains all of the following information:

15    (1) All persons or facility operators subject to, or seeking, a  
16    hazardous waste facilities permit pursuant to this chapter.

17    (2) All hazardous waste facilities permits issued pursuant to  
18    this chapter.

19    (3) All pending applications for hazardous waste facilities  
20    permits, including relevant status information.

21    (4) The identification of each hazardous waste facility, owner,  
22    or operator that the department determines is a significant  
23    noncomplier.

24    (5) All Class I violations issued to hazardous waste facilities in  
25    the previous 10 years and whether the violations have been  
26    corrected.

27    (c) On or before June 1, 2014, the department shall make the  
28    searchable database required by this section available to the public  
29    by posting it on its Internet Web site, and the department shall  
30    keep the database regularly updated thereafter.

31    SEC. 4. Section 25186.4 is added to the Health and Safety  
32    Code, to read:

33    25186.4. (a) Except as provided in subdivision (b), the  
34    department shall not issue, renew, or modify a hazardous waste  
35    facilities permit for a hazardous waste facility that is required to  
36    obtain a permit pursuant to the federal act if the department finds  
37    the applicant, project proponent, or affiliated entity is a significant  
38    noncomplier, including an application for a new, renewed, or  
39    modified hazardous waste facilities permit that is pending as of  
40    January 1, 2014. The department shall determine whether an

1 applicant, project proponent, or any affiliated entity, that has filed  
2 an application for a new, renewed, or modified hazardous waste  
3 facilities permit that is pending as of January 1, 2014, is a  
4 significant noncomplier.

5 (b) The department may issue, renew, or modify a hazardous  
6 waste facilities permit, including modifying a hazardous waste  
7 facilities permit to reflect acquisition by a new person or a change  
8 in ownership or operational control, if the current owner or  
9 operator of the hazardous waste facility is a significant  
10 noncomplier if the department finds both of the following:

11 (1) The person that acquired all, or a portion of, the interests  
12 of the owner or operator of the hazardous waste facility that is a  
13 significant noncomplier, does not qualify as a significant  
14 noncomplier.

15 (2) The person that acquired all, or a portion of, the interests  
16 of the owner or operator of the hazardous waste facility that is a  
17 significant noncomplier, acquired that entity through a bona fide,  
18 arms-length transaction, as defined by the department pursuant  
19 to regulation.

20 SEC. 5. Section 25199.3 of the Health and Safety Code is  
21 amended to read:

22 25199.3. (a) Notwithstanding any other provision of law, but  
23 except as provided in Section 25199.3.1, an applicant for a  
24 hazardous waste facility project may submit applications for a land  
25 use decision and for one or more permits to the appropriate public  
26 agencies simultaneously. Unless a state agency is prohibited by  
27 statute from approving a permit before the granting of a local land  
28 use decision, the state agency shall not refuse to issue a permit for  
29 a hazardous waste facility project on the grounds that the applicant  
30 has not been granted a land use permit, except that the state agency  
31 may provide that the permit shall not become effective until the  
32 applicant is granted a local land use permit.

33 (b) Any public agency may request another public agency to  
34 jointly review applications for a permit or land use decision for a  
35 hazardous waste facility project. A public agency may consolidate,  
36 with other public agencies, public meetings and hearings permitted  
37 or required by law or regulation for the issuance of a permit or the  
38 making of a land use decision for a hazardous waste facility project.

1 (c) The department shall coordinate the technical review of  
2 applications for permits for hazardous waste facility projects that  
3 are received by state agencies.

4 (d) Upon the request of a local agency, the department, and any  
5 other state agency that is authorized to issue a permit for a  
6 hazardous waste facility project, shall provide technical assistance  
7 to a local agency that is reviewing an application for a land use  
8 decision for the project.

9 *SEC. 6. Section 25199.3.1 is added to the Health and Safety*  
10 *Code, to read:*

11 *25199.3.1. (a) Notwithstanding subdivision (l) of Section*  
12 *25199.1, for purposes of this section, "material expansion" means*  
13 *the expansion of an existing hazardous waste facility's treatment,*  
14 *storage, or disposal capacity by 10 percent or more.*

15 *(b) The requirements of this section apply to the issuance of a*  
16 *hazardous waste facilities permit for a hazardous waste facility*  
17 *project or the modification of a hazardous waste facilities permit*  
18 *for a material expansion of a hazardous waste facility.*

19 *(c) (1) An applicant for a hazardous waste facilities permit or*  
20 *modification shall file the application for a hazardous waste*  
21 *facilities permit with the department concurrently with the*  
22 *applications for any land use decisions that a local agency may*  
23 *require for the hazardous waste facility. The department shall post*  
24 *all hazardous waste facilities permit applications and applications*  
25 *for a land use decision on the department's Internet Web site.*

26 *(2) The department shall serve as the lead agency for the*  
27 *issuance of the hazardous waste facilities permit pursuant to the*  
28 *California Environmental Quality Act (Division 13 (commencing*  
29 *with Section 21000) of the Public Resources Code). Any other*  
30 *state agency that is required to issue a permit and any other local*  
31 *agency that is required to issue a land use decision shall serve as*  
32 *a responsible agency.*

33 *(d) The department shall prepare an environmental impact*  
34 *report and a health risk assessment for any hazardous waste*  
35 *facilities permit for a new facility and for any amendment to, or*  
36 *modification of, the hazardous waste facilities permit for a material*  
37 *expansion of the existing facility. The health risk assessment shall*  
38 *meet the same requirements as a health risk assessment prepared*  
39 *pursuant to subdivision (b) of Section 25356.1.5.*

1     (e) The department shall take both of the following actions to  
2     provide for public participation and environmental review of the  
3     hazardous waste facilities permit or modification, when required  
4     to give notice pursuant to this section:

5     (1) The department shall mail or deliver notice to all owners of  
6     all real property as shown on the latest equalized assessment roll  
7     within 1,000 feet, for nonresidential property, or 2,000 feet, for  
8     residential property, of the real property that is the subject of the  
9     application for a hazardous waste facilities permit. In lieu of using  
10    the assessment roll, the department may use records of the county  
11    assessor or tax collector that contain more recent information  
12    than the assessment roll.

13    (2) The department shall provide notice by placing a display  
14    advertisement of at least one-eighth page in at least one newspaper  
15    of general circulation for the city, or if the proposed facility is not  
16    located in a city, the county in which the real property that is the  
17    subject of the application for a hazardous waste facilities permit  
18    is located.

19    (f) (1) The department shall coordinate with the city, or if the  
20    proposed facility is not located in a city, the county, in which the  
21    real property that is the subject of the application for a hazardous  
22    waste facilities permit is located.

23    (2) The department shall hold at least one public scoping  
24    meeting, as described in Section 21083.9 of the Public Resources  
25    Code, in the jurisdiction of the city or county specified in  
26    paragraph (1) before taking any action pursuant to the California  
27    Environmental Quality Act (Division 13 (commencing with Section  
28    21000) of the Public Resources Code).

29    (3) The department shall give public notice pursuant to  
30    subdivision (e) of a scoping meeting at least 30 days before holding  
31    the scoping meeting. The scoping meeting shall be held as close  
32    as practicable to the location of the proposed facility and shall be  
33    held more than two miles from the proposed facility location only  
34    when there is not a publicly accessible meeting location within  
35    two miles of the proposed facility location.

36    (g) The department shall prepare a draft environmental impact  
37    report and draft a health risk assessment. The department shall  
38    allow at least a 45-day public comment period on the draft  
39    environmental impact report and the draft health risk assessment,  
40    and the department shall hold at least one public hearing during



1 *the public comment period in the city, or if the proposed facility*  
2 *is not located in a city, in the county in which the hazardous waste*  
3 *facility is proposed to be located. The department shall give public*  
4 *notice of the public hearing pursuant to subdivision (e) at least 30*  
5 *days before the public hearing.*

6 *(h) The department may certify the final environmental impact*  
7 *report and approve the health risk assessment only at a public*  
8 *hearing. The department shall give public notice of the public*  
9 *hearing and of the public availability of the final environmental*  
10 *impact report and health risk assessment pursuant to subdivision*  
11 *(e) at least 10 days before the public hearing to certify the*  
12 *environmental impact report and approve the health risk*  
13 *assessment.*

14 *(i) (1) After the department certifies the environmental impact*  
15 *report and approves the health risk assessment pursuant to*  
16 *subdivision (h), the department shall either reject the application*  
17 *for the hazardous waste facilities permit or issue a draft hazardous*  
18 *waste facilities permit that is revised to take into account the results*  
19 *of the final environmental impact report and the health risk*  
20 *assessment.*

21 *(2) A draft hazardous waste facilities permit issued pursuant*  
22 *to paragraph (1) shall be known as a “revised draft permit.”*

23 *(3) The department shall give public notice of the availability*  
24 *of the revised draft permit pursuant to subdivision (e) and take*  
25 *public comments on the revised draft permit for at least 60 days.*  
26 *The department shall not issue a final hazardous waste facilities*  
27 *permit until all of the local land use decisions that a local agency*  
28 *may require for the hazardous waste facility have been issued.*

29 *(j) After all local land use decisions have been issued for a*  
30 *hazardous waste facility project and after the 60-day public*  
31 *comment period on the revised draft permit has ended, the*  
32 *department may issue the final hazardous waste facilities permit*  
33 *at a public hearing. The department shall give public notice of the*  
34 *public hearing pursuant to subdivision (e) at least 30 days before*  
35 *holding the public hearing to approve the final hazardous waste*  
36 *facilities permit.*

37 *(k) The department shall make all environmental documents,*  
38 *application materials, public comments, responses, and technical*  
39 *documents related to a hazardous waste facilities permit subject*  
40 *to this section publicly available on its Internet Web site.*

1     *(l) The requirements in this section are in addition to those*  
2     *contained in other applicable laws, including, but not limited to,*  
3     *the California Environmental Quality Act (Division 13*  
4     *(commencing with Section 21000) of the Public Resources Code).*

5     SEC. 7. Section 25200 of the Health and Safety Code is  
6     amended to read:

7     25200. (a) (1) *The department shall issue hazardous waste*  
8     *facilities permits to use and operate one or more hazardous waste*  
9     *management units at a facility that in the judgment of the*  
10    *department meets both of the following requirements:*

11    (A) *Meets the building standards published in the California*  
12    *Building Standards Code relating to hazardous waste facilities.*

13    (B) *Complies with the other standards and requirements adopted*  
14    *pursuant to this chapter.*

15    ~~(a)~~

16    (2) ~~The department shall issue hazardous waste facilities permits~~  
17    ~~to use and operate one or more hazardous waste management units~~  
18    ~~at a facility that in the judgment of the department meet the~~  
19    ~~building standards published in the State Building Standards Code~~  
20    ~~relating to hazardous waste facilities and the other standards and~~  
21    ~~requirements adopted pursuant to this chapter. The department~~  
22    ~~shall impose conditions on each hazardous waste facilities permit~~  
23    ~~specifying the types of hazardous wastes that may be accepted for~~  
24    ~~transfer, storage, treatment, or disposal. The department may~~  
25    ~~impose any other conditions~~ *condition* ~~on a hazardous waste~~  
26    ~~facilities permit that are~~ *is* ~~consistent with the intent of this chapter.~~

27    (3) *The department shall not issue a hazardous waste facilities*  
28    ~~permit to a significant noncomplier, as specified in Section~~  
29    ~~25186.4.~~

30    (b) The department may impose, as a condition of a hazardous  
31    waste facilities permit, a requirement that the owner or operator  
32    of a hazardous waste facility that receives hazardous waste from  
33    more than one producer comply with ~~any~~ *an* order of the director  
34    that prohibits the facility operator from refusing to accept a  
35    hazardous waste based on geographical origin that is authorized  
36    to be accepted and may be accepted by the facility without  
37    extraordinary hazard.

38    (c) (1) (A) ~~Any~~ *A* hazardous waste facilities permit issued by  
39    the department shall be for a fixed term, which shall not exceed

1 10 years for—any a land disposal facility, storage facility,  
2 incinerator, or other treatment facility.

3 (B) ~~Before~~ *Except as provided in subparagraph (C), before the*  
4 fixed term of a permit expires, the owner or operator of a facility  
5 intending to extend the term of the facility's permit shall submit  
6 a complete Part A application for a permit renewal. At any time  
7 following the submittal of the Part A application, the owner or  
8 operator of a facility shall submit a complete Part B application,  
9 or any portion thereof, as well as any other relevant information,  
10 as and when requested by the department. To the extent not  
11 inconsistent with the federal act, when a complete Part A renewal  
12 application, and any other requested information, has been  
13 submitted before the end of the permit's fixed term, the permit is  
14 deemed extended until the renewal application is approved or  
15 denied and the owner or operator has exhausted all applicable  
16 rights of appeal.

17 (C) *If the owner or operator of the hazardous waste facility is*  
18 *a significant noncomplier, the owner or operator is subject to*  
19 *Section 25186.4.*

20 ~~(C)~~

21 (D) This section does not limit or restrict the department's  
22 authority to impose any additional or different conditions on an  
23 extended permit that are necessary to protect human health and  
24 the environment.

25 ~~(D)~~

26 (E) In adopting new conditions for an extended permit, the  
27 department shall follow the applicable permit modification  
28 procedures specified in this chapter and the regulations adopted  
29 pursuant to this chapter.

30 ~~(E)~~

31 (F) When prioritizing pending renewal applications for  
32 processing and in determining the need for any new conditions on  
33 an extended permit, the department shall consider any input  
34 received from the public.

35 (2) The department shall review each hazardous waste facilities  
36 permit for a land disposal facility five years after the date of  
37 issuance or reissuance, and shall modify the permit, as necessary,  
38 to assure that the facility continues to comply with the currently  
39 applicable requirements of this chapter and the regulations adopted  
40 pursuant to this chapter.

1 (3) This subdivision does not prohibit the department from  
2 reviewing, modifying, or revoking a permit at any time during its  
3 term.

4 (d) (1) When reviewing ~~any~~ *an* application for a permit renewal,  
5 the department shall consider improvements in the state of control  
6 and measurement technology as well as changes in applicable  
7 regulations.

8 (2) Each permit issued or renewed under this section shall  
9 contain the terms and conditions that the department determines  
10 necessary to protect human health and the environment.

11 (e) A permit issued pursuant to the federal act by the  
12 Environmental Protection Agency in the state for which no state  
13 hazardous waste facilities permit has been issued shall be deemed  
14 to be a state permit enforceable by the department until a state  
15 permit is issued. In addition to complying with the terms and  
16 conditions specified in a federal permit deemed to be a state permit  
17 pursuant to this section, an owner or operator who holds that permit  
18 shall comply with the requirements of this chapter and the  
19 regulations adopted by the department to implement this chapter.

20 *SEC. 8. Section 21151.1 of the Public Resources Code is*  
21 *amended to read:*

22 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b)  
23 of Section 21080, or Section 21080.5 or 21084, or any other  
24 provision of law, except as provided in this section, a lead agency  
25 shall prepare or cause to be prepared by contract, and certify the  
26 completion of, an environmental impact report or, if appropriate,  
27 a modification, addendum, or supplement to an existing  
28 environmental impact report, for a project involving any of the  
29 following:

30 (1) The burning of municipal wastes, hazardous waste, or  
31 refuse-derived fuel, including, but not limited to, tires, if the project  
32 is either of the following:

33 (A) The construction of a new facility.

34 (B) The expansion of an existing facility that burns hazardous  
35 waste that would increase its permitted capacity by more than 10  
36 percent.

37 (2) *The issuance of a hazardous waste facilities permit pursuant*  
38 *to Section 25200 of the Health and Safety Code, including, but not*  
39 *limited to, the initial issuance of a hazardous waste facilities permit*  
40 *to a land disposal facility, as defined in subdivision (d) of Section*

1 25199.1 of the Health and Safety Code, and the issuance of a  
2 standardized hazardous waste facility permit pursuant to Section  
3 25201.6 of the Health and Safety Code to a new hazardous waste  
4 facility or the modification of such a permit for a facility  
5 undergoing a material expansion, as defined in Section 25199.3.1  
6 of the Health and Safety Code.

7 ~~(3) The initial issuance of a hazardous waste facilities permit~~  
8 ~~pursuant to Section 25200 of the Health and Safety Code to an~~  
9 ~~offsite large treatment facility, as defined pursuant to subdivision~~  
10 ~~(d) of Section 25205.1 of the Health and Safety Code.~~

11 ~~(4)~~

12 (3) A base reuse plan as defined in Section 21083.8.1. The  
13 Legislature hereby finds that no reimbursement is required pursuant  
14 to Section 6 of Article XIII B of the California Constitution for an  
15 environmental impact report for a base reuse plan if an  
16 environmental impact report is otherwise required for that base  
17 reuse plan pursuant to any other provision of this division.

18 (b) For purposes of ~~clause (ii) of subparagraph (A)~~ (B) of  
19 paragraph (1) of subdivision (a), the amount of expansion of an  
20 existing facility shall be calculated by comparing the proposed  
21 facility capacity with whichever of the following is applicable:

22 (1) The facility capacity authorized in the facility's hazardous  
23 waste facilities permit pursuant to Section 25200 of the Health and  
24 Safety Code or its grant of interim status pursuant to Section  
25 25200.5 of the Health and Safety Code, or the facility capacity  
26 authorized in a state or local agency permit allowing the  
27 construction or operation of a facility for the burning of hazardous  
28 waste, granted before January 1, 1990.

29 (2) The facility capacity authorized in the facility's original  
30 hazardous waste facilities permit, grant of interim status, or a state  
31 or local agency permit allowing the construction or operation of  
32 a facility for the burning of hazardous waste, granted on or after  
33 January 1, 1990.

34 (c) For purposes of ~~paragraphs paragraph (2) and (3)~~ of  
35 subdivision (a), the ~~initial~~ issuance of a hazardous waste facilities  
36 permit does not include the issuance of a closure or postclosure  
37 permit pursuant to Chapter 6.5 (commencing with Section 25100)  
38 of Division 20 of the Health and Safety Code.

39 (d) Paragraph (1) of subdivision (a) does not apply to a project  
40 that does any of the following:

1 (1) Exclusively burns digester gas produced from manure or  
2 any other solid or semisolid animal waste.

3 (2) Exclusively burns methane gas produced from a disposal  
4 site, as defined in Section 40122, that is used only for the disposal  
5 of solid waste, as defined in Section 40191.

6 (3) Exclusively burns forest, agricultural, wood, or other biomass  
7 wastes.

8 (4) Exclusively burns hazardous waste in an incineration unit  
9 that is transportable and that is either at a site for not longer than  
10 three years or is part of a remedial or removal action. For purposes  
11 of this paragraph, “transportable” means any equipment that  
12 performs a “treatment” as defined in Section 66216 of Title 22 of  
13 the California Code of Regulations, and that is transported on a  
14 vehicle as defined in Section 66230 of Title 22 of the California  
15 Code of Regulations, as those sections read on June 1, 1991.

16 (5) Exclusively burns refinery waste in a flare on the site of  
17 generation.

18 (6) Exclusively burns in a flare methane gas produced at a  
19 municipal sewage treatment plant.

20 (7) Exclusively burns hazardous waste, or exclusively burns  
21 hazardous waste as a supplemental fuel, as part of a research,  
22 development, or demonstration project that, consistent with federal  
23 regulations implementing the Resource Conservation and Recovery  
24 Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been  
25 determined to be innovative and experimental by the Department  
26 of Toxic Substances Control and that is limited in type and quantity  
27 of waste to that necessary to determine the efficacy and  
28 performance capabilities of the technology or process. However,  
29 a facility that operated as a research, development, or demonstration  
30 project and for which an application is thereafter submitted for a  
31 hazardous waste facility permit for operation other than as a  
32 research, development, or demonstration project shall be considered  
33 a new facility for the burning of hazardous waste and shall be  
34 subject to subdivision (a) of Section 21151.1. (a).

35 (8) Exclusively burns soils contaminated only with petroleum  
36 fuels or the vapors from these soils.

37 (9) Exclusively treats less than 3,000 pounds of hazardous waste  
38 per day in a thermal processing unit operated in the absence of  
39 open flame, and submits a worst-case health risk assessment of  
40 the technology to the Department of Toxic Substances Control for

1 review and distribution to the interested public. This assessment  
2 shall be prepared in accordance with guidelines set forth in the Air  
3 Toxics Assessment Manual of the California Air Pollution Control  
4 Officers Association.

5 (10) Exclusively burns less than 1,200 pounds per day of  
6 medical waste, as defined in Section 117690 of the Health and  
7 Safety Code, on hospital sites.

8 (11) Exclusively burns chemicals and fuels as part of firefighter  
9 training.

10 (12) Exclusively conducts open burns of explosives subject to  
11 the requirements of the air pollution control district or air quality  
12 management district and in compliance with ~~OSHA the regulations~~  
13 ~~adopted by the Federal Occupational Safety and Cal-OSHA~~  
14 ~~regulations.~~ *Health Administration (OSHA) or by the Division of*  
15 *Occupational Safety and Health (Cal-OSHA) of the Department*  
16 *of Industrial Relations.*

17 (13) Exclusively conducts onsite burning of less than 3,000  
18 pounds per day of fumes directly from a manufacturing or  
19 commercial process.

20 (14) Exclusively conducts onsite burning of hazardous waste  
21 in an industrial furnace that recovers hydrogen chloride from the  
22 flue gas if the hydrogen chloride is subsequently sold, distributed  
23 in commerce, or used in a manufacturing process at the site where  
24 the hydrogen chloride is recovered, and the burning is in  
25 compliance with the requirements of the air pollution control  
26 district or air quality management district and the Department of  
27 Toxic Substances Control.

28 (e) Paragraph (1) of subdivision (a) does not apply to a project  
29 for which the State Energy Resources Conservation and  
30 Development Commission has assumed jurisdiction under Chapter  
31 6 (commencing with Section 25500) of Division 15.

32 ~~(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the~~  
33 ~~facility only manages hazardous waste that is identified or listed~~  
34 ~~pursuant to Section 25140 or 25141 of the Health and Safety Code~~  
35 ~~on or after January 1, 1992, but not before that date, or only~~  
36 ~~conducts activities that are regulated pursuant to Chapter 6.5~~  
37 ~~(commencing with Section 25100) of Division 20 of the Health~~  
38 ~~and Safety Code on or after January 1, 1992, but not before that~~  
39 ~~date.~~

40 (g)

1 (f) This section does not exempt a project from any other  
2 requirement of this division.

3 ~~(h)~~

4 (g) For purposes of this section, offsite facility means a facility  
5 that serves more than one generator of hazardous waste.

6 *SEC. 9. No reimbursement is required by this act pursuant to*  
7 *Section 6 of Article XIII B of the California Constitution because*  
8 *a local agency or school district has the authority to levy service*  
9 *charges, fees, or assessments sufficient to pay for the program or*  
10 *level of service mandated by this act, within the meaning of Section*  
11 *17556 of the Government Code.*

12 ~~SECTION 1. Section 1205 of the Labor Code is amended to~~  
13 ~~read:~~

14 ~~1205. (a) As used in this section:~~

15 ~~(1) "Local jurisdiction" means any city, county, district, or~~  
16 ~~agency, or any subdivision or combination thereof.~~

17 ~~(2) "State agency" means any state office, officer, department,~~  
18 ~~division, bureau, board, commission, or agency, or any subdivision~~  
19 ~~thereof.~~

20 ~~(3) "Labor standards" means any legal requirements regarding~~  
21 ~~wages paid, hours worked, and other conditions of employment.~~

22 ~~(b) Nothing in this code shall be deemed to restrict the exercise~~  
23 ~~of local police powers in a more stringent manner.~~

24 ~~(c) When a local jurisdiction expends funds that have been~~  
25 ~~provided to it by a state agency, operates a program that has~~  
26 ~~received assistance from a state agency, or engages in an activity~~  
27 ~~that has received assistance from a state agency, labor standards~~  
28 ~~established by the local jurisdiction through exercise of local police~~  
29 ~~powers or spending powers shall take effect with regard to that~~  
30 ~~expenditure, program, or activity, so long as those labor standards~~  
31 ~~are not in explicit conflict with, or explicitly preempted by, state~~  
32 ~~law. A state agency may not require as a condition to the receipt~~  
33 ~~of state funds or assistance that a local jurisdiction refrain from~~  
34 ~~applying labor standards established by the local jurisdiction to~~  
35 ~~expenditures, programs, or activities supported by the state funds~~  
36 ~~or assistance in question.~~